

REMARKS

In the Office Action, the Examiner rejected claims 1-10 and 12-22. Applicants canceled claim 11 in a previous communication. By the present Response, Applicants amend claims 1 and 18 to further clarify the claimed subject matter. Upon entry of the amendments, claims 1-10 and 12-22 will remain pending in the present patent application. Applicants respectfully request reconsideration of the above-referenced application in view of the foregoing amendments and the following remarks.

Claim Objections

In the Office Action, the Examiner objected to claims 1 and 18. Specifically, the Examiner contended that use of the term “operable to” suggests an option that may or may not happen. Although Applicants do not necessarily agree with the Examiner’s objection, the Applicants amended the claims as set forth above. In view of this amendment, the Applicants respectfully request the Examiner withdraw the objection to the claims.

Rejections under 35 U.S.C. § 102

In the Office Action, the Examiner rejected claims 1-10 and 13-22 under 35 U.S.C. § 102(a) as anticipated by Babula et al., U.S. Publication No. 2003/0061071. Applicants respectfully traverse this rejection.

Legal Precedent

Anticipation under Section 102 can be found only if a single reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 227 U.S.P.Q. 773 (Fed. Cir. 1985). For a prior art reference to anticipate under Section 102, every element of the claimed invention must be identically shown in a single reference. *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). Moreover, the prior art reference also must show the identical invention “in as complete detail as contained in the ... claim” to support a

prima facie case of anticipation. *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989) (emphasis added). Accordingly, Applicants need only point to a single element not found in the cited reference to demonstrate that the cited reference fails to anticipate the claimed subject matter.

Omitted Features of Independent Claims 1, 9, 13, 14, 17, 18, and 21

Turning now to the present claims, the Babula reference fails to disclose each element of independent claims 1, 9, 13, 14, 17, 18, and 21. For instance, independent claim 1 recites “a server system configured to receive data automatically transmitted from a medical device.” (Emphasis added). Independent claims 9, 13, 14, 17, 18, and 21 recite generally similar subject matter. With respect to one embodiment, the present application notes: “The technique comprises automatically sending medical device data automatically to a service center.” Application, page 1, lines 30-31 (emphasis added). And, that “the data may be a request for service containing medical imaging system data.” Application, page 5, lines 5-6.

In contrast, the Babula reference only appears to disclose data exchanges initiated by a user. For example, in the Office Action mailed on September 2, 2009, the Examiner contended that Babula teaches “a server system operable to receive data automatically transmitted from a medical device” because paragraph 0015 and FIG. 6 of Babula disclose “an exemplary user interface page . . . for placing service requests, and sending and receiving service data.” Office Action, pages 14-15. However, because Babula teaches a user interface for initiating contact with the remote service facility, it does not appear to disclose automatically transmitting data from a medical device. Furthermore, while FIG. 6 of Babula displays a message labeled as an “automatic acknowledgment” of a service request, there is no indication that the service request was automatically transmitted from a medical device.

In addition, the Examiner contended that paragraph 0029 of Babula discloses automatic data transmission from a medical device because Babula states that “problem-solution information exchanges may be completely automated for locating information needed to address specific problems or questions encountered by the user.” Office Action, pages 14-15 (emphasis added). The phrase “encountered by the user” appears to indicate that a user would initiate data transmission to the service facility. The service facility would then “locat[e] information needed to address specific problems or questions” in a “completely automated” manner. Because Babula does not explicitly or implicitly indicate that data may be automatically transmitted from a medical device, the cited reference fails to anticipate independent claims 1, 9, 13, 14, 17, 18, and 21.

Furthermore, the Examiner appears to contend that the present claims are anticipated by Babula even if Babula does not disclose automatically transmitting data from a remote medical device because “broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art.” Office Action, page 15 (citing *In re Venner*, 262 F.2d 91, 120 U.S.P.Q. 193 (C.C.P.A. 1958)). However, the claims at issue in *In re Venner* were rejected as being an obvious combination of multiple references. The Examiner has failed to indicate how the holding of a case decided on the issue of obviousness is applicable to the present anticipation rejections. Furthermore, the Examiner has failed to explain how the present claims directed toward systems and methods configured to *electronically* receive and process data from a medical device may be considered a “manual activity.” Therefore, Applicants respectfully request that the Examiner clarify the rejection based on *In re Venner*, or withdraw the rejection.

For at least these reasons, Applicants respectfully request withdrawal of the rejections under 35 U.S.C. § 102 and allowance of claims 1-10 and 13-22.

Rejections under 35 U.S.C. § 103

In the Office Action, the Examiner rejected claim 12 under 35 U.S.C. § 103(a) as being unpatentable over Babula as applied to claims 1-10 and 13-22 in view of Schramm-Apple et al., U.S. Publication No. 2003/0217159. For at least the reasons noted above with regard to independent claim 9, from which claim 12 depends, Applicants assert that the cited references, whether considered separately or in a hypothetical combination, do not disclose *all* of the claimed features of claim 12. Therefore, Applicants request that the Examiner withdraw the rejection of claim 12.

Conclusion

In view of the remarks and amendments set forth above, Applicants respectfully request allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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